



STATE OF NEW JERSEY

In the Matter of B.G.,
Correction Officer Recruit (S9988T),
Department of Corrections

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-70

List Removal Appeal

ISSUED: OCTOBER 3, 2018 (JET)

B.G. appeals the removal of his name from the Correction Officer Recruit (S9988R), Department of Corrections, eligible list based on an unsatisfactory criminal record and falsification of the employment application.

The appellant took the open competitive examination for Correction Officer Recruit (S9988T),¹ achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on September 15, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of an unsatisfactory criminal record and falsification of his employment application. Specifically, the appointing authority asserted that the appellant was charged with Criminal Trespassing; Possession of a Controlled Dangerous Substance (CDS) or Analog (3rd degree); Manufacture/Distribute CDS; CDS on School Property; and Possession/Distribution of CDS within 500 feet of School. The appellant completed a Pre-Trial Intervention program (PTI) regarding these charges which were subsequently dismissed. Additionally, the appointing authority indicated that the appellant failed to disclose several of the above listed charges on his employment application.

On appeal to the Civil Service Commission (Commission), the appellant asserts that the charges against him were not final, and as such, he did not list them on his employment application. In this regard, the appellant contends that he

¹ It is noted that the Correction Officer Recruit (S9988T), Department of Corrections eligible list promulgated on July 23, 2015 and expired on July 22, 2017. Additionally, the title of Correction Officer Recruit was changed, effective May 1, 2018, to Correctional Police Officer.

only listed the information that was provided to him by the Superior Court. The appellant explains that, on July 13, 2005, the complaint against him was dismissed pursuant to his completion of a pre-trial intervention program. The appellant states that he did not falsify any information as he filed for an expungement and listed the information he could remember. The appellant explains that he did not intentionally hide his record and he was unable to provide specific information as he did not possess any information pertaining to the charges at the time. He adds that during pre-employment processing, he gave his records to the Correction Officers and he did not get his records back to complete the employment application. As such, he maintains that he did not have enough information to provide at the time he submitted the employment application.

In response, the appointing authority maintains that the appellant's employment application clearly states the information that is required to be disclosed pertaining to criminal records, falsification of the application and failing to disclose information. The appointing authority states that the appellant initialed the criteria on pages 3 and 4 of the employment application that would lead to his removal if those items were not completed on the employment application. The appointing authority adds that the employment application asks numerous questions concerning personal, employment, criminal, and educational information, as it is the appointing authority's goal to capture a complete profile of potential candidates to assist in the appointment process. In addition, the appointing authority asserts that the appellant has an unsatisfactory criminal record that adversely relates to the employment sought. It adds that he falsified the employment application as he only listed one charge in response to the questions. Additionally, the appointing authority contends that the appellant's participation in a pre-trial intervention program is grounds for his removal. Moreover, the appointing authority indicates that its goals are to select candidates who exhibit respect for the law, and the appellant's record shows that he is not suited for the position of Correction Officer Recruit.

It is noted that the appellant was arrested on May 26, 2004 and charged with Criminal Trespassing in violation of *N.J.S.A. 2C:18-3*; Possession of a CDS or Analog in violation of *N.J.S.A. 2C:35-10A*; Manufacture/Distribute CDS in violation of *N.J.S.A. 2C:35-5*; CDS on School Property in violation of *N.J.S.A. 2C:35-7*; and Possession/Distribution of CDS within 500 feet of School in violation of *N.J.S.A. 2C:35-7.1*. On July 13, 2005, the appellant was sentenced to participate in a PTI program, which upon completion of the program, led to the dismissal of the above listed charges. Additionally, the appellant filed for an expungement which was issued on January 18, 2013.

CONCLUSION

N.J.S.A. 11A:4-11, in conjunction with *N.J.A.C.* 4A:4-4.7(a)4, provides that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. In addition, when the eligible is a candidate for a public safety title, an arrest unsupported by a conviction may disqualify the candidate from obtaining the employment sought. *See Tharpe, v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992). In this regard, the Commission must look to the criteria established in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 to determine whether the appellant's criminal history adversely relate to the position of Correction Officer Recruit. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Civil Service Commission (Commission). It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer employment list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. *See Tharpe v. City of Newark Police Department, supra.*

Participation in the PTI program is neither a conviction nor an acquittal. *See N.J.S.A.* 2C:43-13(d). *See also Grill and Walsh v. City of Newark Police Department*, Docket No. A-6224-98T3 (App. Div. January 30, 2001); *In the Matter of Christopher J. Ritoch* (MSB, decided July 27, 1993). *N.J.S.A.* 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. *In Grill, supra*, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his or her name from the subject eligible list. *Compare In*

the Matter of Harold Cohrs (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

Additionally, in *In the Matter of J.B.*, 386 N.J. Super. 512 (App. Div. 2006), the Appellate Division remanded a list removal appeal for further consideration of the impact of the appellant's expunged arrest on his suitability for a position as a Police Officer. Noting that the former Merit System Board relied heavily on the lack of evidence of rehabilitation since the time of arrest, the Appellate Division found that "[t]he equivalent of 'evidence of rehabilitation' is supplied in these circumstances by the foundation for an expungement. See N.J.S.A. 2C:52-3 and N.J.S.A. 2C:52-8

N.J.A.C. 4A:4-4.7(a)1, in conjunction with N.J.A.C. 4A:4-6.1(a)6, allows the Commission to remove an individual from an eligible list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

In the instant matter, the appointing authority argues that the appellant did not disclose all of the charges against him on the employment application. The appellant argues that he could not disclose the charge since he was unaware of the charges as he did not have his records at the time of pre-employment processing. The Commission is unpersuaded. It is clear that the appellant did not properly complete the employment application. It must be emphasized that it is incumbent upon an applicant, particularly an applicant for a sensitive position such as a Correction Officer Recruit, to ensure that his employment application is a complete and accurate depiction of his history. In this regard, the Appellate Division of the New Jersey Superior Court in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. An applicant must be held accountable for the accuracy of the information submitted on an application for employment and risks omitting or forgetting any information at his or her peril. See *In the Matter of Curtis D. Brown* (MSB, decided September 5, 1991) (An honest mistake is not an allowable excuse for omitting relevant information from an application).

In the instant matter, the appellant's omissions are sufficient cause to remove his name from the eligible list. In response to question 46(A) on the employment application, "Have you ever had a criminal or arrest record expunged," the appellant marked "yes" and did not provide any explanation in response to the question. In response to the question on page 18 of the employment application, the appellant only listed that he was charged with Possession of a CDS in violation of

N.J.S.A. 2C:35-10A (dismissed). The appellant's contention that the charges were dismissed and he was unaware of the charges as he did not have his records at the time of pre-employment processing is unpersuasive since it is clear that he failed to disclose information in his background in response to the questions in the employment application. In this regard, question 46 on the employment application, under the section "arrests, convictions, summonses, and expunged records," defines the words "arrests," "indictments," and "charge" to include any questioning, detaining, holding, or being taken into custody by any police or other law enforcement agencies. Further, page 18 of the employment application indicates that it is mandatory to disclose all charges, whether dismissed, adjudicated or pending, including expungements, conditional discharges, pre-trial interventions, or any other dismissal as a result of successful completion of a diversionary program, any DUI/DWI convictions, juvenile matters, and all incidences of domestic violence. The appellant initialed the employment application. As such, he was aware of the instructions. The type of omissions presented are clearly significant and cannot be condoned as such information is crucial in an appointing authority's assessment of a candidate's suitability for the position. Further, the fact that he provided documentation concerning the disposition of these charges on appeal or that he completed a PTI program does not cure his omission of these items from his employment application. It is clear that the appellant did not properly provide information in response to the questions on the employment application.

The information noted above, which the appellant failed to disclose, is considered material and should have been accurately indicated on his employment application. The failure to do so constitutes falsification of his employment application. Accordingly, his name was properly removed from the eligible list on that basis.

Since the appellant's name has been removed on the basis of falsification of the employment application, it is unnecessary to address the issue pertaining to his criminal record.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3rd DAY OF OCTOBER, 2018



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